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MT LEGISLATIVE HISTORY

Chapter 269 1981

Bill H 678 S _____ Original bill & hist. ___C

H. Committee on Jud		S. Committee on Jud	
Hearing Date(s) 2-10 12	___C	Hearing Date(s) 3-19	___C
2-13	___C	3-21	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 2-13	___C	3-21	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
676	To eliminate earmarked funding for the crime victims compensation program, thus requiring that funding for the program be by leg. appro.	2/7/81	Harper	2/12/81	Do Not Pass 2/19/81	2/19/81
678	Revise the provisions relating to city judges for towns, etc.	2/7/81	Burnett	2/10/81	Do Pass as Amended 2/13/81	2/13/81
689	Providing for the compulsion of incriminating testimony of witnesses before courts, st. agencies, and leg. and regulations.	2/9/81	Keyser	2/17/81	Do Pass 2/20/81	2/20/81
690	Revise and clarify chapters 21 and 22 of Title 46, MCA, pertaining to postconviction and habeas corpus relief.	2/9/81	Keyser	2/17/81	Do Pass 2/20/81	2/20/81
698	To provide that a defendant who is provided with court-appointed counsel may be required upon conviction to repay the costs of counsel.	2/10/81	Meyer	2/16/81	Do Pass as Amended 2/20/81	2/20/81
703	To establish a preference for joint custody awards upon dissolution of marriage.	2/10/81	[illegible]	2/16/81	Do Pass as Amended 2/20/81	2/20/81

REP. SEIFERT asked if the defendant should be treated any different than the plaintiff or should they be responsible to pay court costs if found irresponsible in actions. DOHERTY replied the point he tried to make is the present system and injunction protects the defendant. The court cost and attorney fees and delay only go in one direction. What if we win and they lose?

There was no further discussion on House Bill 668.

HOUSE BILL 678 REP. BURNETT, chief sponsor, stated this bill's purpose is to revise the provisions relating to city judges for towns. This would allow the appointment of a city judge, who would not have to reside in the city limits. When a town marshal makes an arrest there is no way to prosecute the offender because there is no city judge.

DAN MIZNER, Montana League of Cities & Towns, stated the intent of the present law was small towns appoint a city judge or appoint the Justice of Peace to serve as city judge because of the cost involved. The Attorney General ruled the word "may" means they must appoint the Justice of the Peace. This bill has been drafted by the Attorney General's office. Two years ago, third class cities had a rule that in order to serve as an official the person must be a resident of the town for two years or more. Many times this meant no one who lived outside the city limits could be an official. This creates problems across the state. About 110 third class cities are affected by this.

There were no further proponents.

There were no opponents.

In closing, REP. BURNETT stated the committee should consider the problems the cities and towns have and pass the bill.

REP. HUENNEKENS noted section 2, lines 19-25 a city judge does not have to comply with the requirements as prescribed by law. REP. BURNETT replied there are other laws to make those provisions if you are elected or an appointed official.

REP. KEEDY asked if the city judge would be appointed. REP. BURNETT said yes. REP. KEEDY noted line 4, page 3 states a four year term appointment. REP. BURNETT stated this is based on present statutes now. It could be altered if he is appointed.

REP. KEEDY stated section 4 on page 3 gives authority to appoint the Justice of Peace to serve as city judge. REP. BURNETT stated in Carbon County the Justice of the Peace is in Red Lodge. Joliet

and Bridger are provided services by the Justice of the Peace in Red Lodge. Revenue goes back to the county seat and does not go to the town treasurer. Mileage is not paid for.

REP. HUENNEKENS inquired if this was to force a Justice of the Peace to become city judge. The sponsor replied no. In Townsend they could appoint the Justice of the Peace to be the city judge but he did not want to take the job. REP. HUENNEKENS stated page 3, line 15 "shall" mandates the Justice of the Peace serve. MIZNER replied only if he is appointed. "May" was what the Attorney General said.

HOUSE BILL 658 REP. SHONTZ, chief sponsor, stated this bill is to provide a second district court judge in the seventh judicial district. The caseload in that district is the highest in Montana. With the energy development in that area more and more cases will result. The impact of House Bill 10, if passed, will result in more cases. Richland County has agreed to pay the costs for a new judge. An updated caseload per judge per district was handed out. EXHIBIT 3. EXHIBITS 4 through 8 are letters in support of this bill.

SENATOR LARRY TVEIT, representing Richland and Dawson Counties, supports the bill. The judge in that district has the heaviest caseload and the potential for increase is there.

GARY THOGERSON, Richland County Bar Association, supports this bill. Redistricting the areas would not solve the problem. Adding district 16 to the 7th district would cover 1/4 of Montana. That would be in comparison to the county of Switzerland. The district would be too large. The town of Sidney needs a judge right there.

GALE COX, Glendive Lawyer, supports this bill. The judge in that district is one of the busiest judges. He helps out all over the state when needed. There is a good deal of difficulty trying to schedule cases. If another judge was appointed to the district this problem would be lessened.

RICHARD PHILLIPS, Richland County Bar Association, passed out two graphs, EXHIBIT 9 and EXHIBIT 10. The graphs show Richland County and Dawson County increases in caseloads. The number of criminal cases have increased over 200%. The time factor is also a problem. It is ironic but the state compounds part of the problem. Many times the judge is called into Helena to do cases. He is in constant demand.

H. R. OBERT, Richland County Bar Association, is the Public Defendant in Sidney. OBERT stated there were 61 criminal cases in 1980. That is over a 300% increase. In the 36 days he has been

HOUSE BILL 676 REP. DAILY was not able to bring the fiscal note for the bill. He instead brought the sponsor of the bill, REP. QUILICI, to answer any questions.

REP. SEIFERT read 53-9-109 to the committee.

REP. DAILY asked REP. QUILICI to explain the 6% traffic fine. REP. QUILICI handed out the fiscal note of 1977. EXHIBIT 4. In 1977 it was a mechanism to try to take away from the innocent victim funding. At the judge's discretion the fee could be raised 6%. In some cases judges won't add it on. This would allow extra money without dipping into the general fund money.

REP. BROWN suggested a letter of intent should be sent to the cities and towns and the bill should be rejected.

REP. CURTISS stated she voted for this bill when it first came to the legislature because of victims of crime. She wonders if it is doing what it was intended to do. REP. QUILICI responded the innocent victim benefits from this.

REP. IVERSON stated he likes the programs the money goes towards. REP. IVERSON felt the program should continue to run on the money that is now in the account and next session the money should be appropriated as it should have been done in the beginning. REP. DAILY opposed REP. IVERSON's remarks because it is not possible to know what the future sessions will entail.

REP. MATSKO stated he has seen fines go up in several years. A large percentage goes to the judges' retirement instead of to this fund. It might have to be raised 25% to get anything done.

REP. EUDAILY stated if this section is repealed will it disallow payment of money from the fund that is now in it. JIM LEAR stated he thought that was correct.

REP. HUENNEKENS moved to pass this bill for the day until the right language was drawn up. The motion carried with REP. BENNETT, REP. CONN, REP. DAILY, REP. KEEDY, and REP. SEIFERT voting no.

HOUSE BILL 678 REP. YARDLEY moved do pass.

SHARI SPRIGG, from the Attorney General's office was available to answer questions. REP. HUENNEKENS asked about page 2. SPRIGG replied that portion does not have to do with the Attorney General's opinion. The office did not draft that part of the bill. SPRIGG stated the law needs to make clear who gets to make the decision.

REP. KEEDY asked if a Justice of the Peace would have to serve if he did not want to. SPRIGG replied if it is the decision of the

committee to leave it up to the judge she would eliminate the section all together. REP. BURNETT stated in Bridger they offered to hire a Justice of Peace out of Red Lodge. Since the Attorney General's opinion came out they have been without a Justice of the Peace. With this bill the city council could appoint a city judge.

REP. MATSKO stated in most jobs the employee has the option to quit. The way this bill is written the Justice of the Peace will take whatever is offered.

REP. EUDAILY asked if the mayor of a town could appoint a judge. REP. BURNETT stated they could not. They have tried to do this before but it was not allowed.

REP. HANNAH stated the purpose of the bill is to allow small towns to have city judges if they want one. Would that be possible in this bill? JIM LEAR stated those situations would have to be addressed.

REP. KEEDY made the following motions: On page 2, line 1 following "or" insert "may". On line 19 following "who," strike all of line 19 and on line 20 strike through "towns,". On page 3, line 2 strike all of subsection 1 including the title except 3-11-201. On line 6 strike (2).

On line 15 following "may" insert "and who agrees to act in that capacity". REP. KEEDY amended his motion to include page 3, line 2 following (1) strike cities of first, second, and third class and insert of cities of the first class. On line 3 strike "except as provided in subsection 2". The amendments passed.

REP. KEEDY moved the title be amended. The motion passed unanimously.

REP. YARDLEY moved do pass as amended. The motion passed with REP. BENNETT voting no. (REP. IVERSON was absent during the vote).

HOUSE BILL 590 REP. BENNETT moved do not pass.

REP. BROWN made a substitute motion of do pass. REP. BROWN made the following amendments: Page 1 and the title strike all section of the bill except on page 5 lines 1 through 15. This would allow the state to be a party of any action. A further amendment was to strike in the title and line 6 on page 1 and lines 7-10 leaving MCA and inserting new language expanding the coverage of the act and amending section 30-14-133, MCA. On page 5 of the bill retain lines 1-15 and strike lines 16-25. Strike all of pages 6, 7, and 8. On pages 5 and 6 reinsert the original language.

REP. KEEDY made a substitute motion to strike line 6 in its entirety and to amend the title. Following ";" strike "CHANGING" on line 7

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 535	3/03/81	3/16/81	3/17/81				3/17/81		
HB 536	3/03/81	3/16/81	3/25/81				3/25/81		
HB 537	3/03/81	3/16/81	3/17/81				3/17/81		
HB 538	3/04/81	3/19/81	3/23/81					3/23/81	
HB 598	2/18/81	3/05/81	3/05/81					3/05/81	
HB 612	3/04/81	3/19/81	3/21/81						3/21/81
HB 621	2/18/81	3/16/81	3/17/81					3/17/81	
HB 626	3/03/81	3/10/81	3/16/81						3/16/81 (amende
HB 656	2/23/81	3/05/81	3/25/81	tabled					
HB 678	3/03/81	3/19/81	3/21/81				3/21/81		
HB 689	3/03/81	3/10/81	3/24/81					3/24/81	
HB 690	3/03/81	3/10/81	3/14/81				3/14/81		
HB 698	3/04/81	3/18/81	3/21/81				3/21/81		
HB 703	3/04/81	3/18/81	3/25/81					3/25/81	
HB 711	3/04/81	3/18/81	3/18/81				3/18/81		
HB 713	3/04/81	3/17/81	3/21/81				3/21/81		

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 19, 1981

The forty-seventh meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 678:

TO REVISE THE PROVISIONS RELATING TO CITY JUDGES FOR TOWNS.

Rep. Burnett, District 71, presented the bill, saying that the reason for it is an attorney general's ruling opinion which deprived towns of the ability to appoint a city judge.

Dan Mizner, representing the Montana League of Cities and Towns, spoke in support of the bill, saying that there are towns where the nearest justice of the peace is fifty or sixty miles away.

Gary Spaeth also supported the bill by saying that in the town of Joliet it is literally impossible to enforce the laws, and that passage of this bill would help the situation.

Senator Mazurek wondered why the city judge, under this bill, should be appointed rather than elected.

CONSIDERATION OF HOUSE BILL 612:

TO INCLUDE TRANSACTIONS BETWEEN GRAIN CROP PRODUCERS, GRAIN CROP SELLERS, AND GRAIN CROP BUYERS WITHIN DEFINITION OF "BETWEEN MERCHANTS" IN THE UNIFORM COMMERCIAL CODE.

Rep. Bardanouve, District 6, presented the bill.

C. A. Dogterom, representing the Montana Grain Elevator Association, supported the bill by saying the grain industry needs its passage very badly. He said that the changing markets make it necessary for the grain growers to know where they stand from hour to hour. If the market rises rapidly, and the seller of the grain decides that a verbal contract is not in his best interests, he could say that he is not a

for immunity from prosecution in exchange for the defendant's testimony". His amendments passed unanimously. Senator Mazurek moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 300:

David Niss told the committee that similar legislation has been passed by many other states and upheld in federal court. Senator Brown moved that the bill be amended as discussed in previous meetings, and this motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed over Senator Halligan's opposition.

DISPOSITION OF HOUSE BILL 773:

Senator S. Brown moved to amend the bill on page 2, line 12, by striking "or" and inserting "and"; on page 2, line 10, by striking "montnly" and inserting "quarterly". His amendments passed unanimously. Senator Olson moved that the bill be not concurred in. Senator Mazurek pointed out that this bill would make sure the guidelines were being followed. A tie vote caused the motion to fail. Senator S. Brown then moved the second amendment as shown on the attached Committee Report, and his motion passed unanimously. Senator Mazurek moved the first amendment shown on the attached Committee Report, and his motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed over the objection of Senators Anderson, Olson, Berg, and Halligan.

DISPOSITION OF HOUSE BILL 678:

Senator Tveit moved that the bill BE CONCURRED IN, and his motion passed over Senator Anderson's objection.

DISPOSITION OF HOUSE BILL 612:

Senator O'Hara moved that the bill BE NOT CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 713:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed over the opposition of Senators Berg and Crippen.

DISPOSITION OF HOUSE BILL 698:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed over Senator Crippen's objection.

DISPOSITION OF HOUSE BILL 209:

Senator S. Brown moved that the bill be amended as shown on

STANDING COMMITTEE REPORT

March 21, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 678

BURNETT (TVEIT)

Respectfully report as follows: That HOUSE Bill No. 678

DO PASS

BE CONCURRED IN

Chairman.

Mike Anderson

STATE PUB. CO.
Helena, Mont.